

**REMARKS**

The invention is directed to a process for producing phosgene having low content of carbon tetrachloride. A key feature characterizing the inventive process is a pressure parameter. Specifically, the gas stream emerging from the reactor is under pressure of 120 to 140 kPa<sub>abs</sub>.

Claims 2-4 and 8 stand rejected under 35 U.S.C. 103(a) over Cicha and Claim 5 stands rejected over Cicha in view of Obrecht.

Cicha, that disclosed a corresponding process, is completely silent relative to pressure. Obrecht, that disclosed producing phosgene, provides no relevant information relative to the presently critical pressure parameter.

The Courts have long imposed the burden on the Office to produce factual evidence to indicate that the claimed invention is "prima facie" obvious. *In re Peehs*, 204 USPQ 835 (CCPA 1980). If the Office failed to provide such factual evidence, then the rejection is improper and must be overturned. *In re Lunsford*, 148 USPQ 721 (CCPA 1966).

The standard for the prima facie obviousness case requires that the teaching in the prior art would be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination or other modification. *In re Lintner*, 173 USPQ at 562. (1972).

The burden for establishing the prima facie case is therefore on the Office. Only when such has been accomplished, the burden of coming forward with rebuttal evidence shifts to the Applicants. Conversely, if Examiner fails to produce a *prima facie* case of unpatentability, the Applicant is entitled to the patent.

Set against the above stated standard and the fact that Cicha is silent relative to the key pressure parameter, it is manifestly clear that the prima facie case has not been made. Nor is it clear how or why the combined disclosures of Cicha with Obrecht suggest this parameter. Applicants respectfully submit that the rejections do not meet the stated standard and are thus untenable.

In maintaining the rejection, the Examiner:

- (i) asserts that the Applicants have not successfully shown the criticality of the temperature and pressure recited in the claims;

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- (ii) confirms that he sees no superior or unexpected attributes in the phosgene afforded by the recited temperature and pressure parameters;
- (iii) asserts the difference between Cicha's and the present pressure to be minimal and within the range of optimization;
- (iv) notes that the  $\text{CCl}_4$  content of Cicha's phosgene is 90 ppm or less in some cases; and
- (v) contends that the burden is on Applicants to show criticality of pressure and temperature.

In respectfully traversing these points, the Applicants respectfully demur to points (i), (ii) (iii) and (v) above because the prima facie case has not been made. In connection with point ((iii)), the Applicants note that the presumed pressure used by Cicha cannot reasonably be taken as describing much less suggesting the higher pressure that is presently required. The Examiner offered no rational basis for thus dismissing the difference in pressure.

Respecting point (iv), the Applicants call attention to that the instant claims are drawn to a process and that no claim recitation refer to  $\text{CCl}_4$  content at all. As such, the position stated in (iv) above is presently irrelevant.

In maintaining the rejections, the Examiner is clearly in error. Applicants request, therefore, that their application be reconsidered and the rejections be retracted.

Believing the above represents a complete response to the Office Action and that the application is in condition for allowance, Applicants request the earliest issuance of an indication to this effect.

Respectfully submitted,

By



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